

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

CARLOS ALBERTO GIL,

Defendant.
-----X

GLASSER, United States District Judge:

MEMORANDUM AND ORDER
92 CR 532 (ILG)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ DEC 07 2005 ★

P.M. _____
TIME A.M. _____

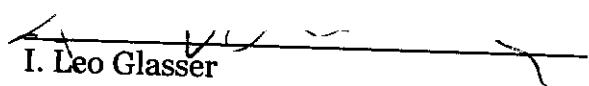
The defendant pleaded guilty on July 1, 1992, more than 13 years ago, to possession with intent to distribute cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Given a total offense level of 32, a criminal history category of VI and a Guideline range of 210 to 262 months, he was sentenced to a term of imprisonment for 210 months. On November 12, 1994, the Court of Appeals granted a motion for summary affirmance.

On March 24, 2005, the defendant filed a motion seeking "Modification and Correction of an Harmful Erroneous Sentence Pursuant to 18 U.S.C. 3742(f)(1) and 3582(c)(2)."

Neither statute being applicable, and his reliance upon Shepard v. United States, 125 S. Ct. 1254 (2005) being completely misplaced, his motion is denied. Judge Friendly's article in 38 U. Ch. L. Rev. 142 (1970), more than 35 years ago, entitled "Is Innocence Irrelevant, Collateral Attack on Criminal Judgments," is still very relevant.

SO ORDERED.

Dated: Brooklyn, New York
December 6th, 2005


I. Leo Glasser